

NOT FOR PUBLICATION

NO. 24455

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DANIEL HEATH STRUEMPF, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR NO. 00-1-0293(1))

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Daniel Heath Struempf (Struempf or Daniel) appeals the June 6, 2001 amended judgment of the circuit court of the second circuit, the Honorable Artemio C. Baxa, judge presiding, that convicted him, upon a jury's verdict, of theft in the second degree.

After a careful review of the record and the briefs submitted by the parties, and giving due consideration to the arguments advanced and the issues raised by the parties, we resolve Struempf's points of error as follows:

1. Struempf first contends:

Admission of Exhibit S-4, the list of the stolen items and their values which an unidentified police officer allegedly copied from a list written by the complainants violated Hawai'i Rules of Evidence Rule 802, prohibiting hearsay, Rule 901, requiring authentication, and Rule 1002, the "best evidence rule", as well as, Daniel's constitutional right to confrontation. United States Constitution, Sixth Amendment, Hawai'i State Constitution, Article I, Section 14.

Opening Brief at 14. Even assuming, *arguendo*, it was error to admit Exhibit S-4, the error was harmless beyond a reasonable

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doubt. State v. Haili, 103 Hawai'i 89, 100, 79 P.3d 1263, 1274 (2003) ("if the trial court erred in admitting evidence, a defendant's conviction will not be overturned if the error was harmless beyond a reasonable doubt"); State v. Peseti, 101 Hawai'i 172, 183, 65 P.3d 119, 130 (2003) ("the denial of a defendant's right to confront adverse witnesses is subject to the harmless-beyond-a-reasonable-doubt standard of review" (citation omitted)). See also Hawai'i Rules of Penal Procedure (HRPP) Rule 52(a) ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

2. For his other point of error on appeal, Struempf asserts that, after the jury had returned a verdict of "Guilty as charged" on a theft in the first degree verdict form and was discharged by the court, the court erred when it recalled and simply polled the jury and thereafter allowed the jury foreperson to amend the erroneous verdict form, without first ascertaining whether the jury had been tainted or affected by outside influences in the interim, and without first allowing the jury to deliberate on whether to amend the verdict. We disagree. Although the court's chosen procedure, which was agreed to by Struempf, was superfluous, HRPP Rule 36 ("Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders."), it was

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harmless beyond a reasonable doubt. State v. Vinuya, 96 Hawai'i 472, 481, 32 P.3d 116, 125 (App. 2001) ("with the possible exception of a limited class of trial errors not relevant here, the standard of review applicable to all trial errors is the 'harmless beyond a reasonable doubt' standard"; in other words, "whether there is a reasonable possibility that error might have contributed to conviction" (citation and block quote format omitted)). It was, after all, the jury that brought the clerical error to the court's attention.

Therefore,

IT IS HEREBY ORDERED that the June 6, 2001 judgment is affirmed.

DATED: Honolulu, Hawai'i, May 20, 2004.

On the briefs:

Deborah L. Kim,
Deputy Public Defender,
State of Hawai'i, for
defendant-appellant.

Acting Chief Judge

Associate Judge

Simone C. Polak,
Deputy Prosecuting Attorney,
County of Maui, for
plaintiff-appellee.

Associate Judge